

Solicitor General

Amendments to Emergency Order Authorities
(*Emergency Management and Civil Protection Act*)

Cabinet	Effective	Filing
Feb 14, 2022	Upon LG signing	Immediate

PROPOSED CABINET MINUTE

Cabinet agreed that:

1. In response to ongoing interference with critical infrastructure throughout the province, including essential trade corridors, which is preventing the movement of essential goods and services, the Ministry of the Solicitor General (SOLGEN) to amend O. Reg 71/22 to:
 - A. Confirm that provincial offences officers can remove objects (including vehicles) themselves, as well as cause someone else to remove them, when the object is not removed in accordance with the officers' orders under the emergency order;
 - B. Give provincial offences officers who remove objects, or cause them to be removed, the power to detain and store those objects or have someone else detain and store them, for as long as the emergency order is in effect;
 - C. Require provincial offences officers to make reasonable efforts to notify the object's owner of where it is being detained and stored
 - D. Make the owners, operators and most recent drivers of vehicles responsible for the costs and charges for removal, detention and storage, as well as make the owners of other objects, or person who used the object in a contravention, responsible for such costs and charges.
 - E. Allow any person, individual or corporation, who is reasonably qualified to assist with removal, detention or storage to perform these activities at the request of a provincial offences officer.
2. SOLGEN and other partner ministries, as appropriate, work with PO and CO on the development and implementation of an integrated communications strategy.

DECISION SOUGHT AND SUMMARY OF PROPOSAL:

The Ministry of the Solicitor General (SOLGEN) is seeking approval to amend O. Reg 71/22, known as the Critical Infrastructure and Highways Emergency Order under the *Emergency Management and Civil Protection Act* (EMCPA). The amendments would authorize the police to hold any vehicle that is removed under the order for the duration that the Emergency Order is in effect. Under the EMCPA, the order can be renewed for 14 days, including after the emergency declaration has ended, to manage the effects of the emergency. The Critical Infrastructure and Highways order could last for weeks or months depending on circumstances, or until such time that legislative amendments to reflect the intent of these measures in law are introduced.

Amendments being sought to the order would make the driver, owner or operator holder liable for all towing and storage costs. In addition, the person storing the vehicle would be able to retain possession of the vehicle until the person's costs and charges have been paid. These provisions would be further to any existing forfeiture proceedings the Crown may undertake in connection with civil forfeiture proceedings under the *Civil Remedies Act*.

Why does Ontario need these changes? Why now?

Following the declaration of emergency on February 11, 2022, action by police services have addressed the blockade of the Ambassador Bridge in Windsor. However, as the bridge has just begun to reopen to regular traffic, there remains a threat of impeded access to or egress from the use of it and other critical transportation infrastructure, including essential trade corridors.

Further, the health and safety of the people of Ottawa continues to be compromised given the presence of the "Freedom Convoy" and other protesters over the past few weeks. In order to address the situation in Ottawa and be able to respond to other urgent situations associated with this emergency, it is critical to ensure that additional measures are in place to support law enforcement capacity to take swift and appropriate action to bring the situation to an end. The proposed amendments are essential and necessary to provide additional tools for law enforcement personnel to respond to the ongoing situation.

CABINET OFFICE ANALYSIS**Introduction**

On February 11, 2022, the Premier declared a province-wide emergency pursuant to section 7.0.1 of the EMCPA. The emergency was declared as a result of interference with transportation infrastructure and other critical infrastructure that is occurring across the province, which is preventing the movement of people and the delivery of essential goods and services. The Premier's declaration was confirmed by Cabinet on February 12, 2022 and through an Order in Council – O. Reg. 70/22.

Critical Infrastructure and Highways – Emergency Order

The emergency order as filed already prohibits persons from impeding access to or egress from, or the ordinary use of critical infrastructure, including through the use of a vehicle to block access. An individual's failure to comply with an order from a provincial offences officer under this emergency order will amount to an offence under the EMCPA for breaching this order. The penalty for breaching an order under the EMCPA, if issued a notice of offence (ticketed) under the *Provincial Offences Act*, is \$750. The maximum punishment for breaching an order charged under other mechanisms under the POA is one-year imprisonment and a fine of up to \$100,000 for an individual. Police officers and other provincial offences officers have the authority to enforce the orders.

In addition, the order as filed grants authority to the Registrar of Motor Vehicles and Deputy Registrar to make an order suspending or canceling licence plate permits, driver's licences and Commercial Vehicle Operator's Registration Certificates.

The government made an emergency order (O. Reg. 71/22) on February 12, 2022 to address the emergency. The emergency order outlines the following:

- Prohibits persons from blocking critical infrastructure.
- Prohibits persons from preventing the ordinary use of, and preventing travel to or from, highways, walkways and bridges where this would disrupt the delivery of good and services, disrupt economic activities or interfere with the health and safety of the public.
- Gives provincial offences officers, including police officers the power to take enforcement actions when they have reasonable ground to believe an individual is not complying with the requirements in the Order. This includes removing an object (e.g. a vehicle) where an individual who is required to do so, does not do so.
- Requires individuals to comply with the orders of provincial offences officers.
- Gives both the Registrar of Motor Vehicles and provincial offences officers the power to order owners or operators of vehicles that are contravening the order, to remove their vehicles, requires them to comply and permits the removal of the vehicles if they do not comply.
- Sets out the powers relating to the suspension and cancelation of driver's licenses, licence plate permits and Commercial Vehicle Operator's Registration Certificates.

Proposed Amendments to Emergency Order

Building on the approach in the emergency order, SOLGEN is proposing amendments to provide additional tools:

- **Detention and storage of Vehicle or other Object for Duration of Emergency –**
A police officer or other provincial offences officer who has removed a vehicle or other object as set out in the order, can detain and store the object for the duration of the period that the emergency order is in place, or get someone else to do so.

- Authority exists such that any object or vehicle that is removed, or caused to be removed, by the police or provincial offences officers can be detained and stored for a period of time equal to the duration of the Emergency Order.
- Action to remove an object or vehicle under the Emergency Order is consistent with the effects of the emergency since it would ensure that the object or vehicle could not be used to further breach the Emergency Orders.
- There are no provisions under the order for forfeiture of an object. Any considerations around forfeiture of an item would be subject to the provisions under the *Civil Remedies Act, 2001*.
- **Costs to Remove Vehicle or Other Object** – The costs and charges for the removal, detention and storage of a vehicle object are to be paid by the owner, operator and most recent driver of the vehicle for which they are liable and this creates a lien on the vehicle. Similarly, the owner and person who most recently used an object other than a vehicle to contravene the order are liable and there is a lien on the object.
- **Liability Protection for Tow Truck Drivers** – A person who is reasonably qualified to help remove a vehicle or object can be asked to do so by a police officer or other provincial offences officer. For example, a tow truck driver could be asked to provide assistance to move a truck by police or a provincial offences officer. This will cause the protections against liability in the EMCPA to apply to the person providing assistance.

The order already authorizes a police officer or other provincial offences officer to remove an object where an individual fails to do so promptly after being ordered to do so. Making the proposed amendments would make it clear that a police officer or other provincial offences officer has the authority to detain and store an object that has been removed for the duration that the emergency order is in place. Amendments would also make it clear that costs associated with removal, detention and storage of an object would be required to be met by an owner, operator or most recent driver or person who most recently used the object to contravene the order, as applicable. A lien would also be placed on the object.

Delivery and Communications

Delivery

If approved, the amended order would take effect immediately upon Lieutenant Governor signature.

Communications

If approved, the amendments to this order would come into effect on filing. This amendment builds on O. Reg. 71/22 which came into effect on February 12.

Proactive targeted communications are recommended in coordination with the Ministry of Transportation (MTO), the Ministry of Labour, Training and Skills Development (MLTSD),

and the Ministry of Municipal Affairs and Housing (MMAH). The new amendments will be communicated to law enforcement personnel through an All Chiefs Memo (ACM) and utilize other ministry channels to connect with additional provincial offences personnel. The order will be communicated directly to media through the Premier's Office and SOLGEN will also update Ontario.ca/alert accordingly.

Key Message

- Public safety is a top priority of this government. It is critical the government continues to take the steps necessary to protect the economy, critical infrastructure, border crossings, streets and highways from disruption. Measures and restrictions will be enforced, and fines levied.

Risks

Civil Liberties Organizations Concerns

There could be a concern that the government is making unnecessary measures given that provisions already exist within the *Civil Remedies Act* for seizure and forfeiture. There could also be a concern that the measures create undue hardship, that could be seen as denying the right to freedom of speech as well as freedom to protest. It will be important to emphasize in communication with the public that the orders are not intended to stop peaceful protests or freedom of speech, but rather to stop the blockade to transportation and critical infrastructure as well as protect the safety of Ontarians.

Trucking Companies

Some trucking companies may not be aware that their trucks are impacted as part of these protests. Detaining trucks could have a negative impact for some businesses by taking trucks off the road for the duration of this order. The owner, operator and driver would then be liable for the costs and charges associated with the removal and detention of a truck.

Tow Truck Operators

To date, some tow operators have chosen to neither support actions against the protest nor support law enforcement. Operators have unofficially communicated that they have received threats to their safety, and to future business opportunities. While the provisions being proposed would support tow operations, some operators may continue to be hesitant to offer their services.

Public Reaction

There is likely to be a mixed public reaction as some individuals who support the protestors will oppose the detention of objects like trucks and see it as an overreach by the government. However, others will respond positively to the government taking these further actions to end the protests in order to restore order, protect Ontarians.

Operators Whose Vehicles or Other Objects Are Detained

There is a risk that the proposed measures could have a negative impact not only on the vehicle operators but also their families. In some instances, truck operators in Ottawa for example, are reported to be using the truck as a residence for them and their families that

are also in situ. It will be important to ensure that supports are in place to ensure the safety and protection of children that might be impacted by the loss of a local residence.

Enforcement Capacity

Due to competing local public safety priorities and increased calls for services, local police services may have limited or uneven capacity to exercise this authority, and to redeploy or share resources across communities as demonstration activities continue or spread to other communities. Blockades continue to draw policing resources away from the front line—mutual aid agreements between services and expedited appointments of special constables are being leveraged where needed.

Potential Confusion for Law Enforcement Personnel

There is a risk that the changes might contribute to confusion for law enforcement personnel. It will be critical to ensure that the measures are clear, practical and make sense on the ground for law enforcement personnel. Inconsistent application of measures may negatively impact public reaction to enforcement response. Clear communication to local enforcement personnel about these measures will be necessary. All Chiefs' Memoranda and the province's dedicated enforcement line and email resource will help to mitigate risks. Given that the measures build on the approach already under the *Civil Remedies Act*, this should make it easier for enforcement personnel to understand and apply.

Potential for Other Protests

There is a risk that there could be other protests happening across the province, including those involving First Nations/Indigenous groups, and this amendment to the order may create an unintended consequence of enforcing against those other protests. Since the government does not direct law enforcement, the order and these amendments may result in enforcement of order violations that do not involve the "Freedom Convoy".

